CHAPTER 21

State Aid for Schools

ARTICLE 1

Teachers’ Salaries and Overhead

**SECTION 59‑21‑10.** “School” defined.

For the purpose of this article, a “school” is defined as a division of the school system consisting of pupils composed of one or more grade groups, organized as one unit with one or more teachers to give instructions of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant, as in the case when elementary and secondary programs are housed in the same plant.

HISTORY: 1962 Code Section 21‑251; 1952 Code Section 21‑251; 1942 Code Section 5424; 1933 (38) 567; 1935 (39) 243; 1967 (55) 719.

CROSS REFERENCES

Constitutional provision prohibiting direct aid to religious or other private educational institutions, see SC Const, Art 11, Section 4.

State Board of Education, as successor to State Educational Finance Commission, to prescribe and promulgate rules and regulations to carry out provisions of Sections 59‑5‑100, 59‑5‑110, 59‑21‑10 et seq., 59‑67‑410 et seq., 59‑71‑10 et seq., and 59‑71‑410 et seq., see Section 59‑5‑120.

**SECTION 59‑21‑20.** Appropriation for teacher salaries based on term of 190 days.

The General Assembly shall make sufficient appropriation to pay state aid to salaries of all school teachers in the public schools on the basis and for the length of one hundred ninety days in the elementary and secondary schools in the State.

HISTORY: 1962 Code Section 21‑252; 1952 Code Section 21‑252; 1942 Code Section 5423; 1933 (38) 567; 1935 (39) 467; 1937 (40) 623; 1947 (45) 306; 1967 (55) 719; 1977 Act No. 219 Pt II Section 7; 1984 Act No. 512, Part II, Section 9, Division II, Subdivision C, SubPart 4, Section 1(b).

CROSS REFERENCES

South Carolina retirement systems, generally, see Section 9‑1‑10 et seq.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

School districts cannot reduce the length of the school year below the statutory minimum number of days as a means of lowering teachers’ salaries. 1983 Op Atty Gen, No. 83‑15, p. 28.

A school district may give a particular teacher less local supplement for this year than was given last year and still be eligible for the State aid increase. 1976‑77 Op Atty Gen, No 77‑82, p 75.

A local school district is not required to pay a teacher the same local supplement in one year as it did the prior year in order to be eligible for State aid increase. 1976‑77 Op Atty Gen, No 77‑87, p 80.

NOTES OF DECISIONS

In general 1

Under former law 2

1. In general

Framers of constitution left legislature free to change means of funding state schools to meet modern needs, and General Assembly chose valid means of providing for education in state through use of shared funding plans in South Carolina Education Finance Act and related laws. Acts in question are valid legislative enactments and do not contravene Article XI Section 3 of South Carolina Constitution on additional ground that when validity of legislative act is questioned, courts will presume legislative act to be constitutionally valid and every intendment will be indulged in favor of act’s validity. Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

Shared funding plan implemented by General Assembly is rational and constitutional means by which to equalize educational standards of public school system and educational opportunities of all students; argument was rejected that shared funding plan denied students equal educational opportunities because formula considered each school district’s wealth; South Carolina Education Finance Act provides for shared funding formula plan that takes into account individual wealth of each school district, but school districts which lack sufficient tax base receive proportionally more state funds and are required to pay proportionately less local revenue for public school operation. Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

2. Under former law

Quoted in Moore v. Board of Trustees of Charleston County Consol. School Dist. (D.C.S.C. 1972) 344 F.Supp. 682.

The plain language of SC Const Art XI Section 3 places responsibility for free public education with the General Assembly, which has reasonably provided a public school term each year of 185 days and has limited state aid for teacher’s salaries accordingly, pursuant to Sections 59‑1‑200, 59‑1‑420, and 59‑21‑20; accordingly, a county had no duty to make summer school available to all children, free of charge, since summer school is not a part of the free public school system required by the State Constitution. Washington By and Through Washington v. Salisbury (S.C. 1983) 279 S.C. 306, 306 S.E.2d 600.

**SECTION 59‑21‑30.** Schools to which preceding section not applicable.

No school in any school district shall continue open a longer period of time than that fixed by (a) the board of trustees in the district in which such school is located or (b) the county board of education in any county which may operate under a county unit plan. No school shall receive any benefits under the provisions of Section 59‑21‑20 which does not have the minimum average daily attendance for the previous scholastic year, or for the current scholastic year, fixed in the schedules below.

In three‑teacher high schools the minimum average daily attendance shall be 48; in four‑teacher high schools the minimum average daily attendance shall be 68; in five‑teacher high schools the minimum average daily attendance shall be 90; in six‑teacher high schools the minimum average daily attendance shall be 114; in seven‑teacher high schools the minimum average daily attendance shall be 140; in eight‑teacher high schools the minimum average daily attendance shall be 168; in nine‑teacher high schools the minimum average daily attendance shall be 198; in ten‑teacher high schools the minimum average daily attendance shall be 230; in eleven‑teacher high schools the minimum average daily attendance shall be 264; in twelve‑teacher high schools the minimum average daily attendance shall be 300; and in all high schools with more than twelve teachers the minimum average daily attendance shall be 26 pupils for each teacher.

In one‑teacher elementary schools the minimum average daily attendance shall be 17; in two‑teacher elementary schools the minimum average daily attendance shall be 36; in three‑teacher elementary schools the minimum average daily attendance shall be 60; in four‑teacher elementary schools the minimum average daily attendance shall be 84; in five‑teacher elementary schools the minimum average daily attendance shall be 110; in six‑teacher elementary schools the minimum average daily attendance shall be 138; in seven‑teacher elementary schools the minimum average daily attendance shall be 168; in eight‑teacher elementary schools the minimum average daily attendance shall be 200; in nine‑teacher elementary schools the minimum average daily attendance shall be 234; and in all elementary schools with more than nine teachers the minimum average daily attendance shall be 26 pupils per teacher. In addition to the number of teachers a district is entitled to under the above schedule, a district shall receive benefits to pay additional teachers, high or elementary, according to the excess average daily attendance in each school, such excess to be added together by level. The high school excess average daily attendance shall be divided by 26 and the elementary excess average daily attendance by 26. Each district shall receive benefits for the salaries resulting from such excess, provided that the school board of trustees shall not employ a teacher in any school based on the average daily attendance of another school within the district.

HISTORY: 1962 Code Section 21‑253; 1952 Code Section 21‑253; 1942 Code Section 5423; 1933 (38) 567; 1935 (39) 467; 1937 (40) 623; 1947 (45) 306; 1964 (53) 1918; 1967 (55) 719; 1969 (56) 444.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

A school district may give a particular teacher less local supplement for this year than was given last year and still be eligible for the State aid increase. 1976‑77 Op Atty Gen, No 77‑82, p 75.

A local school district is not required to pay a teacher the same local supplement in one year as it did the prior year in order to be eligible for State aid increase. 1976‑77 Op Atty Gen, No 77‑87, p 80.

Greenville School District may count students who are patients of the Shriner’s Hospital in their pupil attendance figures as a basis for State aid. 1976‑77 Op Atty Gen, No 77‑89, p 81.

1962 Code Section 21‑253 [1976 Code Section 59‑21‑30] establishes a formula which must be used bythe State of allocate funds among school districts according to the average daily attendance. 1975‑76 Op Atty Gen, No 4528, p 391.

NOTES OF DECISIONS

In general 1

1. In general

Cited in U. S. by Clark v. Elloree School Dist. No. 7, Orangeburg County, S. C. (D.C.S.C. 1968) 283 F.Supp. 557.

**SECTION 59‑21‑40.** Partial participation of small schools.

Notwithstanding the provisions of Section 59‑21‑30, if any one‑ or two‑teacher school fails to maintain the minimum schedule therein provided, it shall participate in the benefits of Section 59‑21‑20 in the proportion that the enrollment and average daily attendance maintained bear to said minimum schedule for such school.

HISTORY: 1962 Code Section 21‑254; 1952 Code Section 21‑254; 1942 Code Section 5423; 1933 (38) 567; 1935 (39) 467; 1937 (40) 623; 1947 (45) 306.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑50.** Participation of small schools which cannot be consolidated.

No one‑teacher school shall be deprived of the benefits of this chapter because such school fails to meet the minimum requirements of enrollment and average daily attendance when it is impracticable to consolidate the school with some other school because of mountains, rivers, islands, swamps or other natural causes. The board of education of the county in which the school is located shall be the competent judge in such case.

HISTORY: 1962 Code Section 21‑255; 1952 Code Section 21‑255; 1942 Code Section 5423; 1933 (38) 567; 1935 (39) 467; 1937 (40) 623; 1947 (45) 306.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑60.** Part‑time teachers not covered.

No person who teaches daily less than four periods of forty‑five minutes each shall receive any pay under the provisions of Section 59‑21‑20, except the superintendent of a school system employing more than ten teachers.

HISTORY: 1962 Code Section 21‑256; 1952 Code Section 21‑256; 1942 Code Section 5423; 1933 (38) 567; 1935 (39) 467; 1937 (40) 623; 1947 (45) 306.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑90.** Computation of years of experience of teachers.

In computing the years of experience of teachers under the schedule in Section 59‑21‑80 each full regular scholastic year taught by a teacher in the public schools of the State shall be counted as one year’s experience.

HISTORY: 1962 Code Section 21‑259; 1952 Code Section 21‑259; 1951 (47) 546.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑100.** Effect of time spent in graduate school on computation of years of teaching experience.

In computing the years of experience for teachers, each scholastic year a teacher spends doing graduate work shall be counted as one year’s teaching experience. The provisions of this section shall not apply to any teacher who is employed full time while attending graduate school nor to any person who has not accumulated at least one year of teaching experience.

HISTORY: 1962 Code Section 21‑259.1; 1973 (58) 369.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑110.** Allowance for supervision and overhead.

In addition to the State aid for teachers’ salaries, each school district or operating unit shall be allowed for supervision and overhead seven and 50/100 dollars a school year for each pupil, which allowance shall be based on enrollment. These funds shall be disbursed monthly along with the disbursement of funds for teachers’ salaries.

HISTORY: 1962 Code Section 21‑260; 1952 Code Section 21‑260; 1951 (47) 546; 1953 (48) 181; 1968 (55) 2855.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑120.** Allowance for maintenance and operation.

In addition to all other State aid, each school district or operating unit shall be allowed, for maintenance and operation, ten dollars a school year for each pupil. Such allowance shall be based on enrollment. These funds shall be disbursed monthly along with the disbursement of funds for teachers’ salaries.

HISTORY: 1962 Code Section 21‑261; 1955 (49) 190, 329; 1966 (54) 2424.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑130.** Disbursement to counties.

The State Superintendent of Education shall present vouchers monthly to the Comptroller General who shall issue his warrants to the State Treasurer payable to the county treasurers of the respective counties for such amount of state school aid as may be on hand, available for and applicable to the payment for state school aid due the respective counties, under the provisions hereof.

HISTORY: 1933 Code (38) 567; 1942 Code Section 5428; 1952 Code Section 21‑263; 1962 Code Section 21‑263; 1982 Act No. 417, Section 1.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑140.** State Fiscal Accountability Authority may borrow in anticipation of revenue.

The State Fiscal Accountability Authority may borrow in each year in anticipation of the receipt of revenues provided for school aid such sum or sums as may be necessary to pay any portion of the amounts appropriated herein and becoming due to the respective counties of the State prior to the collection thereof. Such notes shall be issued in such form and manner as the Board may elect and, when issued, are hereby declared to be current obligations of the State. But in lieu of borrowing as provided herein the Comptroller General may issue his warrant against the general fund in the treasury when it appears that sufficient funds are available therein, and the State Treasurer shall pay the same as provided in Section 59‑21‑130. Such withdrawals from the general fund, if made, shall constitute a loan to the school aid fund from the general fund, the same to be repaid when revenues provided for school aid are collected. The proceeds of such loan or loans shall be paid to the respective counties for school aid to the respective counties as provided in Section 59‑21‑130.

HISTORY: 1962 Code Section 21‑264; 1952 Code Section 21‑264; 1942 Code Section 5429; 1934 (38) 1221.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

States 118.

Westlaw Key Number Search: 360k118.

C.J.S. States Section 214.

**SECTION 59‑21‑150.** Reimbursement of district principals, teachers, and instructional supervisors for cost of college courses in field of specialization.

Beginning in fiscal year 1985‑86, all school district and state agency school employees required by the State Board of Education to hold State Board of Education certification are eligible for tuition reimbursement at a rate consistent with that charged at public colleges and universities every two years for successful completion of a three‑hour credit course in their field of specialization at a South Carolina public or private college, so long as they work in that field in a South Carolina public school or state agency school for the succeeding year. The reimbursement must be provided by the State from funds appropriated to the State Department of Education.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision C, SubPart 3, Section 5; 1985 Act No. 201, Part II, Section 82.

LIBRARY REFERENCES

Schools 144(1).

Westlaw Key Number Search: 345k144(1).

C.J.S. Schools and School Districts Sections 315 to 316, 321 to 322, 329 to 331, 338.

**SECTION 59‑21‑160.** State appropriations for school district employer contributions; calculation of allocations to individual school districts.

Beginning with appropriations for school year 1998‑99, state funds appropriated by the General Assembly for school district employer contributions must be allocated to individual school districts based on the Education Finance Act formula. State appropriations for school district employer contributions for school years before 1998‑99 must be allocated using the EFA formula and the weighted pupil method in the following percentages:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| School Year | Weighted Pupil Method | EFA Formula |
| 1994‑95 | forty percent | sixty percent |
| 1995‑96 | thirty percent | seventy percent |
| 1996‑97 | twenty percent | eighty percent |
| 1997‑98 | ten percent | ninety percent. |

HISTORY: 1994 Act No. 497, Part II, Section 94.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

ARTICLE 3

School Facilities

**SECTION 59‑21‑310.** Definitions.

For the purpose of this article (a) the term “capital improvement” shall mean the cost of constructing, improving, equipping, renovating and repairing school buildings or other school facilities or the cost of the acquisition of land whereon to construct or establish school facilities; and (b) “Board” shall mean the State Board of Education.

HISTORY: 1962 Code Section 21‑271; 1952 Code Section 21‑271; 1951 (47) 546; 1967 (55) 719.

CROSS REFERENCES

Constitutional provision prohibiting direct aid to religious or other private educational institutions, see SC Const, Art 11, Section 4.

Capital outlay, defined, see Section 59‑20‑20.

**SECTION 59‑21‑320.** Annual grant for financing needed capital improvements.

In order to assist school districts in financing needed capital improvements, the General Assembly shall annually allocate to the Board a sum equivalent to thirty dollars multiplied by the number of pupils enrolled in grades one through twelve of the public schools and, effective beginning in Fiscal Year 1988‑89, fifteen dollars multiplied by the number of students enrolled in public kindergarten programs. The calculation must be based on the one hundred thirty‑five day count of the average daily membership during the school year ending in the calendar year prior to the calendar year in which the fiscal year begins. In no year may the amount allocated be less than the total sum required to meet principal and interest payments becoming due to that fiscal year on state school bonds.

HISTORY: 1962 Code Section 21‑272; 1952 Code Section 21‑272; 1951 (47) 546; 1953 (48) 181; 1967 (55) 719; 1969 (56) 444; 1984 Act No. 512, Part II, Section 9, Division II, Subdivision G, SubPart 1, Section 2; 1988 Act No. 658, Part II, Section 7.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

The school building fund money under Section 59‑21‑320, et seq. and Section 59‑21‑420 of the Code can be used, in accordance with the terms of those statutes to pay for lease/purchase contracts for the acquisition of school facilities; such payments for lease/purchase contracts may be excluded from calculation of the “level of financial effort per pupil for non‑capital programs” for purposes of the maintenance of local effort requirements in Section 12‑35‑1557. 1989 Op Atty Gen, No. 89‑10, p 32.

State law does not presently authorize acquisition of school buildings on a lease‑purchase basis and in the absence of specific statutory authorization and approval by the State Department of Education, funds may not be made available to make payments upon any such lease under the terms of the annual pupil grants. 1970‑71 Op Atty Gen, No 3186, p 158.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Powers v. State Educational Finance Commission (S.C. 1952) 222 S.C. 433, 73 S.E.2d 456.

**SECTION 59‑21‑330.** Obligation to make grants subordinate to State school bonds.

The obligation of the State to make sums available to school districts as provided under Section 59‑21‑320 shall be subordinate to the pledge made to secure the State school bonds authorized under Article 5 of Chapter 71 of this Title and the sinking fund created for their retirement.

HISTORY: 1962 Code Section 21‑273; 1952 Code Section 21‑273; 1951 (47) 546; 1967 (55) 719.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑340.** Application of grants.

The Board shall annually apply sums allocated under Section 59‑21‑320 in the following order: (a) There shall first be reserved and set aside such amount as may be necessary to pay principal and interest payments becoming due that year on State school bonds. (b) The balance remaining each year after deducting the amount reserved in (a) above shall be credited on the books of the Board to the several school districts in the State, apportioned in the ratio that the enrollment of each school district bears to the enrollment of the State as a whole. Provided, that of the funds available in 1967‑68 for allocation to school districts under the provisions of Sections 59‑21‑340 and 59‑71‑550, as amended in 1967 Act No. 485, there shall first be apportioned among the several school districts sufficient funds to have made available to all districts at least ninety percent of the funds available to them under the provisions of Article 3 of Chapter 21 of Title 59, as now constituted. Remaining funds for 1967‑68 shall be apportioned in accordance with the provisions of Sections 59‑21‑340 and 59‑71‑550, as amended.

HISTORY: 1962 Code Section 21‑274; 1952 Code Section 21‑274; 1951 (47) 546; 1953 (48) 181; 1967 (55) 719.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑350.** Purposes for which grants may be used.

The sums credited by the Board to each school district, under the provisions of Sections 59‑21‑340 and 59‑71‑550, shall remain available to school districts until requisitioned by them for purposes approved by the Board. Such funds shall be available for the following purposes only and in the following order of priority: (a) To be applied on the financing of capital improvements approved by the Board; (b) to pay principal and interest of school district indebtedness represented by bonds or notes issued before July 1, 1951 for any capital improvement or bonds or notes issued on or after July 1, 1951 for capital improvements approved by the Board.

HISTORY: 1962 Code Section 21‑275; 1952 Code Section 21‑275; 1951 (47) 546; 1967 (55) 719.

CROSS REFERENCES

Application of sales tax revenues to state public school building fund for purposes prescribed in this section, see Section 59‑21‑1010.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

A school district may accept a gift of land under a quit‑claim deed; however, State funds cannot be approved for building purposes on the land unless the district has a fee simple title. 1976‑77 Op Atty Gen, No 77‑26, p 32.

NOTES OF DECISIONS

In general 1

1. In general

Use of approved capital improvement funds by a school district for general operation purposes would violate the school facilities provisions in Sections 59‑21‑310 through 59‑21‑450. Anderson County School Dist. 1 v. Anderson County Bd. of Educ. (S.C.App. 1988) 296 S.C. 260, 371 S.E.2d 807, certiorari dismissed 300 S.C. 493, 388 S.E.2d 815. Education 219

**SECTION 59‑21‑355.** Appropriations to Education Improvement Act building aid; allocation; transfer; trust fund.

(A) The amount appropriated in the annual general appropriations act for the Education Improvement Act building aid, construction, and renovation, after being appropriately adjusted, must be transferred to a special trust fund established by the Comptroller General. These funds shall remain available to the school districts of the State until approved for use in accordance with Section 59‑21‑350.

(B) The amount appropriated in the annual general appropriations act for the Education Improvement Act building aid, construction, and renovation must be allocated to eligible school districts based on the one hundred thirty‑five day count of average daily membership for the second preceding fiscal year.

HISTORY: 1994 Act No. 497, Part II, Section 15C.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑360.** County plans of necessary capital improvements or tax relief.

In order to guide the Board in passing upon requests for the use of grants, the county boards of education of the respective counties shall prepare a survey of necessary capital improvements or a plan for tax relief on school indebtedness within the operating unit. Such surveys shall show existing facilities, desirable consolidations, the new construction and new facilities necessary and desirable for the efficient operation of the public schools of the county and a plan of tax reduction in the school district or operating unit by use of such funds in retiring any outstanding indebtedness for school facilities. The Board may, in its discretion, deny all applications for the use of funds of the public school building fund from any county until such time as an acceptable and reasonably satisfactory plan, looking particularly to efficiency through consolidations of school districts, has been submitted by the county board of education and all applications from school districts or operating units shall conform to the plan of the county board of education.

HISTORY: 1962 Code Section 21‑278; 1952 Code Section 21‑278; 1951 (47) 546.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

The State Board of Education, the County Superintendent of Education, and the District Board of Trustees, must exercise discretion in passing upon application for use of state and district funds for repairs and improvements on property that is leased by a school district. 1978 Op Atty Gen, No 78‑34, p 55.

NOTES OF DECISIONS

In general 1

1. In general

Plans for school construction must be approved by Commission, which is empowered to deny any application deemed by it to be unsatisfactory, and the Commission has wide discretion in this regard. Thomas v. Hollis (S.C. 1958) 232 S.C. 330, 102 S.E.2d 110.

Commission was not arbitrary and capricious in refusing to approve plan submitted by county board where two different surveys directed by Commission recommended another plan, and second survey estimated $200,000 would be saved thereby. Thomas v. Hollis (S.C. 1958) 232 S.C. 330, 102 S.E.2d 110.

Quoted in Powers v. State Educational Finance Commission (S.C. 1952) 222 S.C. 433, 73 S.E.2d 456.

**SECTION 59‑21‑370.** Applications for funds.

In order to avail itself of funds to its credit, a school district shall make application to the Board in such form as the Board may require, including therein a complete and full description of the purpose for which funds are to be applied, together with any information that may be required by the Board to evaluate the proposed use of funds.

HISTORY: 1962 Code Section 21‑279; 1952 Code Section 21‑279; 1951 (47) 546; 1953 (48) 181; 1967 (55) 719.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

The Proviso appearing on Page 68 of the South Carolina General Appropriations Act for 1975‑76 (R321, H2650) requires all schools to operate a breakfast program eligible for federal reimbursement, to insure that all children eligible for a free breakfast receive such breakfast. 1974‑75 Op Atty Gen, No 4084, p 161.

NOTES OF DECISIONS

In general 1

1. In general

This article contemplates that where schools are operated as a county unit, applications for funds for building construction shall originate with the county board of education. Thomas v. Hollis (S.C. 1958) 232 S.C. 330, 102 S.E.2d 110.

**SECTION 59‑21‑380.** Remittance and disbursement of funds.

When an application of a school district as provided in Section 59‑21‑370 has been approved by the Board, funds shall be remitted, as may be required from time to time, to the treasurer of the county of which the school district is a part. The county treasurer shall place the sum so received in a special fund to be known as “Public School Building Fund for School District No. ‑ ‑ “ and shall pay out the money of such fund only on school warrants properly drawn by the authorities of the school district concerned and such money shall be expended in the same manner as provided by law for the expenditure of other school funds.

HISTORY: 1962 Code Section 21‑285; 1952 Code Section 21‑285; 1951 (47) 546; 1967 (55) 719.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

Funds remitted to a local school district pursuant to 1962 Code Section 21‑285 [1976 Code Section 59‑21‑380], as amended, from the State public school building fund to construct an administration building must be expended in accordance with 1962 Code Section 21‑290 [1976 Code Section 59‑21‑410], as amended, which requires a public contract after public advertisement for the construction in question. 1975‑76 Op Atty Gen, No 4540, p 407.

**SECTION 59‑21‑390.** Employment of architects and other personnel.

The Board may employ architects, consultants and sufficient personnel to assist the county boards of education in the preparation of the county plans required under Section 59‑21‑360.

HISTORY: 1962 Code Section 21‑286; 1952 Code Section 21‑286; 1951 (47) 546; 1967 (55) 719.

**SECTION 59‑21‑400.** Rules and regulations.

The Board shall prescribe reasonable rules and regulations in order to ensure that funds derived from the State public school building fund will not be used improvidently or unwisely and that the efficiency of the public school system will be increased by the expenditure of the funds.

HISTORY: 1962 Code Section 21‑287; 1952 Code Section 21‑287; 1951 (47) 546; 1967 (55) 719.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

The State Board of Education, the County Superintendent of Education, and the District Board of Trustees, must exercise discretion in passing upon application for use of state and district funds for repairs and improvements on property that is leased by a school district. 1978 Op Atty Gen, No 78‑34, p 55.

The State Board of Education may adopt a regulation that would require a school district to obtain the approval of the Board before it could either sell, lease, or otherwise convey any land acquired by the school district with money derived from the State Public School Building Fund. 1968‑69 Op Atty Gen, No 2649, p 63.

**SECTION 59‑21‑410.** Letting of contracts.

Any construction to be financed from funds received from the State public school building fund, pursuant to the approval of the Board, shall be on public contract, such contract to be let by the trustees of the school district, and the awarding of the necessary contracts shall be in the sole province of the school district concerned. Contracts shall be let on public advertisement thereof, and on such conditions and within such limitations as the Board may approve.

HISTORY: 1962 Code Section 21‑290; 1952 Code Section 21‑290; 1951 (47) 564; 1967 (55) 719.

LIBRARY REFERENCES

Schools 80(2).

Westlaw Key Number Search: 345k80(2).

C.J.S. Schools and School Districts Sections 409 to 414, 761.

Attorney General’s Opinions

Funds remitted to a local school district pursuant to 1962 Code Section 21‑285 [1976 Code Section 59‑21‑386], as amended, from the State public school building fund to construct an administration building must be expended in accordance with 1962 Code Section 21‑290, [1976 Code Section 59‑21‑410], as amended, which requires a public contract after public advertisement for the construction in question. 1975‑76 Op Atty Gen, No 4540, p 407.

**SECTION 59‑21‑420.** Funds for renovation, capital improvement, or repair of classrooms, etc., or reduction of millage as to bonds.

(a) Beginning with state Fiscal Year 1984‑85, the State shall remit an amount on a per‑pupil basis to each school district of the State in the manner and under the conditions that the General Assembly provides for the School Building Aid program of the Education Improvement Program in the annual general appropriation act. These funds must be used (i) for the renovation, capital improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms, or (ii) to reduce the millage required to pay principal and interest on bonds issued for such purposes if the district qualifies for the exception provided for in subsection (b) hereof.

(b) If a school district has issued bonds or otherwise undertaken any capital improvement programs during any of the most recent five fiscal years, at least fifty percent of the funds provided in subsection (a) must be used to reduce the millage required to pay debt service on such outstanding bonds.

Provided however, in the event that a school district sold bonds or secured a loan at an interest rate less than prevailing rates and has an identified need for funds in excess of fifty percent of funds provided in subsection (a) or anticipates a significant increase in need for additional classroom space, that district may request a waiver from this requirement by the State Board of Education. After consultation with the State Treasurer on prevailing interest rates and review of the evidence accompanying the waiver request from the school district, and upon certification by the State Treasurer that rates are beneficial to local school district, the State Board of Education may grant a waiver if the evidence is substantiated. The remaining sums may be used either to reduce millage to pay debt service or to pay for capital improvements, repairs, or renovations otherwise authorized during the then current fiscal year. Provided, Further, That if, on the occasion when the annual millage would otherwise be increased to provide for capital improvements, repairs, or renovations, there is on hand with the country treasurer sums from the appropriation herein authorized, sufficient to meet all or a portion of the payments of principal and interest on bonds to be outstanding in the ensuing fiscal year, then such portion of the millage required to pay such debt service need not be imposed.

(c) A capital improvement program for purposes of this section is defined as incurring debt for school building purposes or levying and collecting school taxes for school building purposes over the district’s last five fiscal years averaged at least one‑half the amount the district is entitled to receive during state Fiscal Year 1985 as provided in subsection (a) hereof. If the district has fiscal autonomy to any degree, it shall provide for the manner in which the school millage must be reduced. If the district does not have fiscal autonomy, the governing body of the county wherein the district is located shall provide for the manner in which the school millage must be reduced.

(d) The funds authorized herein for reduction in millage for debt service may not be expended in conjunction with the authorization of bonds that increase a school district’s bonded indebtedness above the limit provided for in Article X of the South Carolina Constitution or expended to pay debt service on bond anticipation notes authorized which would put the total bonded indebtedness of the school district (general obligation and bond anticipation) above the constitutionally mandated limit.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision G, SubPart 1, Section 1.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

When school district funds are disbursed by the county treasurer to the school district as provided by Section 59‑69‑215, the school district, thereafter, has the duty and responsibility to expend and account for the same. When school funds are disbursed under Section 59‑69‑215, the school district must annually advise the county auditor of the tax revenue needed to satisfy bond debt. The auditor is to levy the tax therefor and the treasurer is to collect the same. 1986 Op Atty Gen, No. 86‑93, p 284.

The school building fund money under Section 59‑21‑320, et seq. and Section 59‑21‑420 of the Code can be used, in accordance with the terms of those statutes to pay for lease/purchase contracts for the acquisition of school facilities; such payments for lease/purchase contracts may be excluded from calculation of the “level of financial effort per pupil for non‑capital programs” for purposes of the maintenance of local effort requirements in Section 12‑35‑1557. 1989 Op Atty Gen, No. 89‑10, p 32.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Minimally adequate education required by Constitution’s education clause includes providing students adequate and safe facilities in which they have the opportunity to acquire: (1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; (2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and (3) academic and vocational skills. Abbeville County School Dist. v. State (S.C. 1999) 335 S.C. 58, 515 S.E.2d 535. Constitutional Law 1075

Constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the legislative branch of government. Abbeville County School Dist. v. State (S.C. 1999) 335 S.C. 58, 515 S.E.2d 535. Constitutional Law 2340

Forty less wealthy school districts, their students, and their taxpayers failed to state cognizable equal protection claim of disparate impact premised on the distribution of funds under the Education Improvement Act (EIA), absent claim of discriminatory intent. Abbeville County School Dist. v. State (S.C. 1999) 335 S.C. 58, 515 S.E.2d 535. Constitutional Law 3222; Education 212

Use of approved capital improvement funds by a school district for general operation purposes would violate the school facilities provisions in Sections 59‑21‑310 through 59‑21‑450. Anderson County School Dist. 1 v. Anderson County Bd. of Educ. (S.C.App. 1988) 296 S.C. 260, 371 S.E.2d 807, certiorari dismissed 300 S.C. 493, 388 S.E.2d 815. Education 219

2. Constitutional issues

State’s educational funding scheme, as a whole, denied students in plaintiffs’ school districts the constitutionally required opportunity to receive a minimally adequate education, as guaranteed by the education clause of the state constitution; districts’s students received instruction in many cases from corps of unprepared teachers, were grouped by economic class into what amounted to no more than educational ghettos, rated by Department of Education’s guidelines as substandard, and large percentages of students, over half in some instances, were unable to meet minimal benchmarks on standardized tests, but were nonetheless pushed through the system to “graduate.” Abbeville County School Dist. v. State (S.C. 2014) 410 S.C. 619, 767 S.E.2d 157, rehearing denied, amended 414 S.C. 166, 777 S.E.2d 547, superseded 415 S.C. 19, 780 S.E.2d 609. Education 219

**SECTION 59‑21‑430.** Use of funds within specified time.

Any funds received pursuant to this section must be expended or contractually committed within forty‑eight months of the appropriation provided for school buildings under the South Carolina Education Improvement Act of 1984. No school district may use the funds allocated for school building purposes for operational, instructional, or any purposes other than those enumerated in Section 59‑21‑420. Any school district using these funds as herein prohibited is prohibited from receiving any other funds under the South Carolina Education Improvement Act of 1984 until the school district has reimbursed the Education Improvement Act of 1984 Fund for the funds allocated for school building purposes it has received pursuant to the South Carolina Education Improvement Act of 1984.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision G, SubPart 1, Section 3.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑440.** Monthly reporting on approved expenditures and compliance with tax reduction requirement.

The State Department of Education shall provide a monthly report to the State Board of Education, the Education Oversight Committee, The Committee on Financing Excellence, and the Education‑Business Partnership on approved expenditures and compliance with the tax reduction requirement.

HISTORY: 1985 Act No. 201, Part II, Section 9(F); 1998 Act No. 400, Section 15.

**SECTION 59‑21‑450.** Allocation of unexpended funds or operating surplus in Education Improvement Act fund to school building aid program.

Any unexpended funds or operating surplus in the Education Improvement Act Fund in any fiscal year must be allocated to the school building aid program.

HISTORY: 1987 Act No. 170, Part II, Section 6; 1994 Act No. 497, Part II, Section 15I.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

ARTICLE 5

Education of Physically and Mentally Handicapped Children

**SECTION 59‑21‑510.** Definitions.

(1) “Special education program” means educational services carried on through special schools, special classes and special instruction;

(2) “Educable mentally handicapped pupils” means pupils of legal school age whose intellectual limitations require special classes or specialized education instruction to make them economically useful and socially adjusted;

(3) “Trainable mentally handicapped pupils” means pupils of legal school age whose mental capacity is below that of those considered educable, yet who may profit by a special type of training to the extent that they may become more nearly self‑sufficient and less burdensome to others;

(4) “Emotionally handicapped pupils” means pupils of legal school age with demonstrably adequate intellectual potential, who because of emotional, motivational, or social disturbance require special classes or specialized education instruction suited to their needs;

(5) “Hearing handicapped pupils” means pupils of age four or older who are certified by a licensed specialist that their hearing deficit requires special classes or specialized education instruction suited to their needs;

(6) “Orthopedically handicapped pupils” means pupils of legal school age who have an impairment which interferes with the normal functions of the bones, joints, or muscles to such an extent and degree as to require the school to provide special facilities and instructional programs;

(7) “Visually handicapped pupils” means pupils of age four or older who are blind or possess a severe visual disability as defined in Section 43‑25‑20;

(8) “Learning disabilities pupils” means pupils with special learning disabilities who exhibit a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language. These may be manifested in disorders of listening, thinking, talking, reading, writing, spelling or arithmetic. They include conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, developmental aphasia, etc. They do not include learning problems which are due primarily to visual, hearing, or motor handicaps, to intellectual disability, emotional disturbances or to environmental disadvantage;

(9) “Physically handicapped children” means children of sound mind and of legal school age who suffer from any disability making it impracticable or impossible for them to benefit from or participate in the normal classroom program of the public schools.

(10) “Caseload” means membership of handicapped pupils receiving special instruction.

(11) “Pupils with autism” means pupils with a severe and chronic disorder that affects communication and behavior and which is manifested during early development by a characteristic pattern of social, communication, and learning behaviors. Autism is a behaviorally defined syndrome; the essential features of which include disturbances of: developmental rates or sequences; response to sensory stimuli; speech, language, and communication; and capacities to relate to people, objects, and events.

HISTORY: 1954 (48) 1479; 1958 (50) 1877; 1962 Code Section 21‑295; 1964 (53) 2101; 1967 (55) 153; 1970 (56) 2406; 1972 (57) 2638; 1976 Act No. 692 Section 1; 1983 Act No. 79; 1996 Act No. 429, Section 2.

Code Commissioner’s Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mentally retarded” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded”.

CROSS REFERENCES

Application of this section to the definition of handicapped children for purposes of special education programs, see Section 59‑33‑20.

Constitutional provision prohibiting direct aid to religious or other private educational institutions, see SC Const, Art 11, Section 4.

Establishing qualifications for state funding according to the definitions of this section, see Section 59‑20‑40.

Inclusion of four‑year‑old vision and hearing‑impaired children and five‑year‑old children with disabilities, previously included under this section, within definition of “preschool children with disabilities” for purposes of Preschool Programs for Children with Disabilities, see Section 59‑36‑10.

Special education programs for emotionally handicapped pupils, see Section 59‑33‑100.

Attorney General’s Opinions

The State Department of Education has the legal responsibility to provide an appropriate education for all handicapped children and youth, outside the jurisdiction of the Department of Mental Retardation, who are enrolled and eligible for enrollment in public schools, including the so‑called “profoundly” mentally retarded. 1978 Op Atty Gen, No 78‑129, p 161.

**SECTION 59‑21‑520.** Supervision and expansion of special education program by State Department of Education.

The special education program shall be under the supervision of the State Department of Education. The State Superintendent of Education shall expand the services of the State Department of Education to include through the Division of Instruction a more extensive program of special education for physically and educable mentally handicapped children in the various school districts of the State.

HISTORY: 1962 Code Section 21‑295.1; 1954 (48) 1479; 1958 (50) 1877.

LIBRARY REFERENCES

Schools 148(2.1).

Westlaw Key Number Search: 345k148(2.1).

C.J.S. Schools and School Districts Sections 700 to 702, 717.

**SECTION 59‑21‑530.** State Superintendent authorized to employ additional personnel; salaries.

The State Superintendent of Education may employ on the staff of the State Department of Education additional personnel, if such be necessary, of suitable professional qualifications, whose duties shall be, under the direction of the State Superintendent of Education, to help develop and supervise the special education program authorized in this article. The State Superintendent of Education is authorized to pay the salary of such additional personnel from the appropriation to the State Department of Education for the hard of hearing and speech program.

HISTORY: 1962 Code Section 21‑295.2; 1954 (48) 1479; 1958 (50) 1877.

LIBRARY REFERENCES

Schools 47.

Westlaw Key Number Search: 345k47.

C.J.S. Schools and School Districts Sections 81 to 92, 174.

**SECTION 59‑21‑540.** Special educational services for which State aid allowed.

The State Superintendent of Education shall reimburse school districts of the State for providing special educational services when in compliance with the provisions of this article and the rules and regulations of the State Board of Education, from the regular appropriations and for teachers’ salaries, in such manner as is provided by law. Such State aid shall be allowed as follows:

(1) For special educational services for the educable mentally handicapped, State aid shall be allowed (a) for a teacher employed with a minimum average daily attendance of ten enrolled in a self‑contained class, or (b) a teacher in educable mentally handicapped employed to serve a minimum caseload of twenty‑six educable mentally handicapped pupils for other instruction in a regular class.

(2) For special education services for the trainable mentally handicapped, State aid shall be allowed for a teacher employed with a minimum average daily attendance of eight.

(3) For special education for pupils with speech defects, State aid shall be allowed to school districts for speech clinicians (a) on the basis of one clinician per seventy‑five speech handicapped children with this special aid being allowed notwithstanding the fact that such children may be counted for regular State aid in regular classes, or (b) on the basis of one clinician per one thousand five hundred students where severe speech problems are present requiring more intensified therapy.

(4) For special education for emotionally handicapped children, State aid shall be allowed (a) for a teacher employed with a minimum average daily attendance of eight enrolled in a self‑contained class, or (b) a teacher in emotionally handicapped employed to serve a minimum caseload of twenty‑six emotionally handicapped pupils enrolled for other instruction in a regular class.

(5) For special education for hearing handicapped children, State aid shall be allowed (a) for a teacher with a minimum average daily attendance of six enrolled in a self‑contained class, or (b) a teacher in hearing handicapped employed to serve a minimum caseload of twelve hearing handicapped pupils enrolled for other instruction in a regular class.

(6) For special education for visually handicapped children, State aid shall be allowed (a) for a teacher employed with a minimum average daily attendance of six enrolled in a self‑contained class, or (b) a teacher in visually handicapped employed to serve a minimum caseload of twelve visually handicapped pupils enrolled for other instruction in a regular class.

(7) For special education for orthopedically handicapped children, State aid shall be allowed (a) for a teacher employed with a minimum average daily attendance of eight enrolled in a self‑contained class, or (b) a teacher in orthopedically handicapped employed to serve a minimum caseload of sixteen orthopedically handicapped pupils enrolled for other instruction in a regular class.

(8) For special education for learning disabilities children, State aid shall be allowed (a) for a teacher employed with a minimum average daily attendance of ten enrolled in a self‑contained class, or (b) a teacher in learning disabilities employed to serve a minimum caseload of twenty‑six learning disabilities children enrolled for other instruction in a regular class.

(9) For teachers serving more than one type of handicapped pupil, State aid shall be allowed on the basis of the enrollment required for the handicapping condition affecting the majority of pupils served by the specialist.

(10) The proportionate part of a teacher’s salary will be allowed when such a teacher has less than the required minimum average daily attendance and enrollment.

(11) If in any district there are handicapped children not able even with the help of transportation to be assembled in a school, instruction may be provided in a child’s home, or in hospitals or sanitoria. Children so instructed may be counted under the provisions of this article. If the child is permanently disabled, the cost of classroom‑to‑home video or audio service shall be allowed at the rate of six hundred dollars per year. The State Board of Education shall determine the number of hours of home instruction acceptable in lieu of regular school attendance.

HISTORY: 1962 Code Section 21‑295.3; 1954 (48) 1479; 1958 (50) 1877; 1964 (53) 2101; 1967 (55) 153, 719; 1970 (56) 2406; 1972 (57) 2638; 1976 Act No. 692, Section 2.

CROSS REFERENCES

Definition of “caseload”, see Section 59‑21‑510.

Funds for services to trainable and profoundly mentally handicapped pupils, see Section 59‑21‑600.

LIBRARY REFERENCES

Schools 148(2.1).

Westlaw Key Number Search: 345k148(2.1).

C.J.S. Schools and School Districts Sections 700 to 702, 717.

**SECTION 59‑21‑550.** Qualifications of teachers.

No person shall be employed as a teacher in the special education program in the State unless such person holds a valid teacher’s certificate issued by the State Department of Education and, in addition, possesses such special qualifications as the State Board of Education may require, or holds a comparable certificate in special education as may be developed by the State Board of Education.

HISTORY: 1962 Code Section 21‑295.4; 1954 (48) 1479; 1958 (50) 1877.

LIBRARY REFERENCES

Schools 131.

Westlaw Key Number Search: 345k131.

C.J.S. Schools and School Districts Sections 197 to 199.

**SECTION 59‑21‑560.** Annual surveys and determination of eligibility for special education services by local school authorities.

(1) County superintendents of education, with the cooperation of school boards and other school officials in the various counties of the State and with the special assistance of the county attendance teachers, shall make an annual survey to determine the number of physically and mentally handicapped children in the respective counties and school districts and shall report results of such survey to the State Superintendent of Education in such manner as the State Superintendent of Education may require.

(2) It is the responsibility of the local school authorities, with the assistance of the State Department of Education, to determine by tests and special examination what pupils are eligible for special education services. No handicapped child shall be considered eligible for special education services except upon a certified diagnosis of a defect by competent and appropriate professional authorities acceptable to the State Department of Education.

HISTORY: 1962 Code Section 21‑295.5; 1954 (48) 1479; 1958 (50) 1877.

**SECTION 59‑21‑570.** Districts may operate programs singly or jointly; eligibility of district for State aid.

A school district may operate a special education program for children eligible for such services under the provisions of this article and rules and regulations of the State Board of Education, either as a district or jointly with other districts.

When proper facilities have been provided and when application has been made to and approved by the State Department of Education, the district will become eligible for State aid as provided in this article.

HISTORY: 1962 Code Section 21‑295.6; 1954 (48) 1479; 1958 (50) 1877.

LIBRARY REFERENCES

Schools 148(2.1).

Westlaw Key Number Search: 345k148(2.1).

C.J.S. Schools and School Districts Sections 700 to 702, 717.

**SECTION 59‑21‑580.** Rules, regulations and policies, of State Board of Education.

The State Board of Education is directed to establish rules, regulations and policies:

(1) For screening, classifying and determining, by use of standardization tests and such psychological and medical services as may be necessary, by qualified personnel, the eligibility of pupils to receive the benefits under the provisions of this article;

(2) For determining certification requirements and special qualifications of teachers;

(3) For outlining the manner and procedure by which applications for aid and plans for operation may be made and approved; and

(4) For other matters not specified herein when necessary to carry out the provisions of this article.

HISTORY: 1962 Code Section 21‑295.7; 1954 (48) 1479; 1958 (50) 1877.

LIBRARY REFERENCES

Schools 148(2.1).

Westlaw Key Number Search: 345k148(2.1).

C.J.S. Schools and School Districts Sections 700 to 702, 717.

**SECTION 59‑21‑590.** Confidentiality of data on handicapped children.

Names of handicapped children served under this article shall be submitted to the State Department of Education only according to the policies and procedures prescribed by the United States Secretary of Health, Education and Welfare established to protect the confidentiality of data on handicapped children receiving education or related services at public expense.

HISTORY: 1976 Act No. 692, Section 3.

CROSS REFERENCES

Applicability to Legislative Audit Council staff members of provisions relative to confidentiality of agency records, see Section 2‑15‑62.

LIBRARY REFERENCES

Records 55.

Westlaw Key Number Search: 326k55.

C.J.S. Records Section 101.

**SECTION 59‑21‑600.** Distribution of funds for educational services to mentally handicapped pupils.

Notwithstanding the provisions of Section 59‑21‑540, and in order to insure adequate educational services for trainable mentally handicapped pupils and profoundly mentally handicapped pupils in South Carolina school districts, the State Board of Education, upon the recommendation of the Education Oversight Committee, through the State Department of Education shall develop a Regulation for distribution of funds appropriated by the General Assembly for this purpose.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision A, SubPart 6, Section 2; 1998 Act No. 400, Section 15.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

ARTICLE 7

Employment of Psychologists

**SECTION 59‑21‑710.** State aid authorized for employment of school psychologist.

The State Superintendent of Education is hereby authorized and directed to pay State aid to any county or school district in South Carolina employing a school psychologist under conditions as set forth in this article.

HISTORY: 1962 Code Section 21‑295.21; 1962 (52) 1896.

CROSS REFERENCES

Constitutional provision prohibiting direct aid to religious or other private educational institutions, see SC Const, Art 11, Section 4.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑720.** Psychologists shall have certificates.

All school psychologists employed by the counties or school districts shall have a valid certificate issued by the State Board of Education according to regulations established by the Board.

HISTORY: 1962 Code Section 21‑295.22; 1962 (52) 1896.

LIBRARY REFERENCES

Schools 157.

Westlaw Key Number Search: 345k157.

C.J.S. Schools and School Districts Sections 722 to 723, 725.

**SECTION 59‑21‑730.** Payment of State aid; amount.

State aid for school psychologists shall be paid from the appropriation for State aid for teachers salaries. The amount of State aid for each psychologist employed shall be determined by the application of the same laws, rules and regulations as pertain to the existing State scale for paying teachers’ salaries.

HISTORY: 1962 Code Section 21‑295.23; 1962 (52) 1896.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑740.** Eligibility for State aid; amount of State aid for which school may otherwise qualify not affected.

Any county or school district shall be eligible for State aid for a school psychologist employed for each five thousand pupils enrolled; provided, that each county shall be eligible for State aid for at least one school psychologist. Provided, further, that any district or county may combine with any other school district or county in order to meet the minimum enrollment requirement and for the purpose of securing the services of a school psychologist. When school districts or counties are acting jointly in this respect, State aid shall be paid to the operating units in proportion to the enrollment in these units; provided, further, payments of State aid under the provisions of this article shall have no bearing on the amount of State aid for which a school may otherwise qualify regardless of the fact that pupils with whom the psychologist works may already have been counted for other purposes of State aid.

HISTORY: 1962 Code Section 21‑295.24; 1962 (52) 1896.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑750.** Psychologist employed by State Department of Education.

The State Superintendent of Education shall employ a school psychologist in the State Department of Education in order to properly supervise the work of school psychologists employed by the counties and school districts and also to be available to help counties and school districts unable to employ a school psychologist.

HISTORY: 1962 Code Section 21‑295.25; 1962 (52) 1896.

LIBRARY REFERENCES

Schools 157.

Westlaw Key Number Search: 345k157.

C.J.S. Schools and School Districts Sections 722 to 723, 725.

**SECTION 59‑21‑760.** Rules and regulations.

The State Board of Education may promulgate such rules and regulations as may be necessary to carry out the provisions of this article.

HISTORY: 1962 Code Section 21‑295.26; 1962 (52) 1896.

ARTICLE 9

Sales Tax Revenues for Schools

**SECTION 59‑21‑1010.** Disposition and allocation of revenues; special vote required to amend or repeal this section.

(A) The revenue derived from Sections 12‑36‑2620(1) and 12‑36‑2630(1) must be remitted to the State Treasurer to be credited to the state public school building fund for the purposes provided for in Article 3 of Chapter 21 of Title 59 and any sum above that amount must be placed to the credit of the general fund of the State and must be used for school purposes only.

(B) The revenue derived from Sections 12‑36‑2620(2), 12‑36‑2630(2), and 12‑36‑2640(2) must be deposited by the State Treasurer in the South Carolina Education Improvement Act of 1984 Fund as a fund separate and distinct from the general fund of the State. All unappropriated money in this fund and earning on investments from this fund must remain part of the separate fund and must not be deposited in the general fund except as provided for in this section. Money from this fund may be spent only for elementary and secondary school purposes. Any change in the management or use of this fund for other than elementary and secondary education is permitted only by a two‑thirds vote provided in this section.

(C)(1) Upon implementation of the provisions of this section by law, the law may not be amended or repealed except by special vote provided in this section.

(2) For purposes of this subsection, a special vote means an affirmative two‑thirds vote of the total membership of the Senate and an affirmative two‑thirds vote of the total membership of the House of Representatives.

All monies appropriated from the Education Improvement Act of 1984 Fund which are disbursed by the State Department of Education must be appropriated in one division of the section in the annual general appropriations act making appropriations for the State Department of Education.

HISTORY: 1990 Act No. 612, Section 74C.

CROSS REFERENCES

Maximum tax on sale or lease of certain items, calculation of tax on manufactured homes, maximum tax on purchase of certain property by religious organizations, maximum tax on sale or use of machinery for research and development, see Section 12‑36‑2110.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑1020.** Department of Education to monitor and audit disbursements; reversion of unexpended appropriations.

The State Department of Education shall carefully monitor and audit the disbursement of monies from the South Carolina Education Improvement Act Fund. Any line item appropriation not fully expended for any program under the South Carolina Education Improvement Act of 1984 reverts to the fund.

HISTORY: 1990 Act No. 612, Section 74C.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑21‑1030.** Level of financial effort per pupil required of each school district; application for waiver.

Except as provided in this section, school district boards of trustees or any other appropriate governing body of a school district shall maintain at least the level of per pupil financial effort established as provided in fiscal year 1983‑84. Beginning in 1985‑86, local financial effort for noncapital programs must be adjusted for an inflation factor estimated by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.

Thereafter, school district boards of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office. The county auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Office of Research and Statistics of the Revenue and Fiscal Affairs Office is maintained as a minimum effort. No school district which has not complied with this section may receive funds from the South Carolina Education Improvement Act of 1984 Fund. School district boards of trustees may apply for a waiver to the State Board of Education from the requirements of this section if:

(1) the district has experienced a loss in revenue because of reduction in assessed valuation of property or has had a significant increase in one hundred thirty‑five average daily membership;

(2) the district has experienced insignificant growth in revenue collections from the previous year;

(3) the district has demonstrated for one year that it has achieved operating efficiencies and all education requirements are being met;

(4) a midyear revenue shortfall results in a reduction of funds appropriated in accordance with Chapter 20 of Title 59 (The Education Finance Act). A decline in the measured academic achievement of the students must immediately cause the State Board of Education to void all waivers provided under this section and make the district ineligible to apply for any waivers under this section for two consecutive years. If the decline in student achievement occurs, the district shall revert to the minimum effort requirement, adjusted for the prior years inflation factor. Waiver (4) does not apply to funds needed to meet the Minimum Salary Schedule for teachers in South Carolina. A school district is eligible for an annual renewal of the waiver provided the district meets one of the above criteria and meets the minimum effort requirement of the previous year and at least the minimum required effort of the Education Finance Act.

HISTORY: 1990 Act No. 612, Section 74C.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

1. In general

The calculation of the local financial effort under Section 59‑21‑1030 must be based upon the inflation factor estimated by the Division of Research and Statistical Services and not upon the Education Finance Act. 1992 Op Atty Gen, No. 92‑21.

Whether a school district would be entitled to a waiver under Section 59‑21‑1030 would be a decision for the State Board of Education. 1992 Op Atty Gen, No. 92‑21.

2. Under former law

An inflation factor must be applied to the previous year’s effort in order to calculate the minimum local financial effort for non‑capital programs for each year after 1985‑86. No exception appears to exist as to these local funding requirements, absent a waiver by the State Board of Education or a reduction in State EFA funding, in which case a proportionate reduction in local EFA funding may be made. The phrase “financial effort per pupil for non‑capital programs” includes teachers’ salaries. School districts must continue to maintain local teacher salary supplements in subsequent school years at a level no less than their 1983‑84 level. Inflationary adjustments in these salary supplements are not required. References to the local financial effort for EIA funding and teachers’ salary supplements appear to apply to dollar amounts rather than to percentages of total funding. 1986 Op Atty Gen, No. 86‑53, p 153.

School districts must increase their local funding effort in accordance with the EIA regardless of the growth in local revenue per mill. The legislature has provided in the EIA a controlling means for setting the millage to fund this effort as provided in an approval school budget. 1986 Op Atty Gen, No. 86‑87, p 267.

The funding level required to be maintained by school districts in 1988‑89 should be based upon the 1987‑88 level of financial effort that would include the payment of a 1986‑87 deficit plus an inflation factor. 1988 Op Atty Gen, No. 88‑37, p 116.

The Marion County Board of Education has authority to levy the same millage as in the prior year plus an additional millage that does not exceed that which is necessary to increase revenue in an amount equal to the stated inflation factor. If the millage so levied equals or exceeds that required to meet the financial effort required by section 12‑35‑1557, no further action is required to be taken by the county auditor. Should such not be the case, then the auditor must levy additional millage that is adequate to satisfy that financial effort. 1988 Op Atty Gen, No. 88‑76, p 220.

NOTES OF DECISIONS

In general 1

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Validity 1/2

1 2. Validity

Authority of county board of education to review and approve school district budgets and to set tax millage rates for each school district did not violate provision of State Constitution guaranteeing uniform taxation within a jurisdiction; legislature envisioned that county board would set different millage rates for the individual school districts, such that school taxes fell within the “special levies” exception to the general rule requiring uniform taxation. Burriss v. Anderson County Bd. of Educ. (S.C. 2006) 369 S.C. 443, 633 S.E.2d 482, rehearing denied. Education 249; Education 286

1. In general

A statute did not imply a grant of fiscal autonomy to 2 school districts to the extent that their boards of trustees could compel a tax levy for additional funding they deemed necessary, independent of any action or approval by the county, where the statute only provided the grant of autonomy to a third district, and specifically provided that the tax levy for the other 2 districts “shall be determined” by the county council. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 216

A county was required by Section 59‑21‑1030 to appropriate projected Educational Improvement Act minimum local effort as submitted by the school district and reported by the department of education, rather than adopting the county auditor’s independent calculation of the effort, since Section 59‑21‑1030 requires the district to maintain at least the level of financial effort per pupil as in the prior year, adjusting for an inflation factor, and thus the auditor was required to set millage so that the minimum effort per pupil would be generated. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 216

Under Section 4‑29‑67, fees‑in‑lieu are to be treated in the same manner as property taxes, and are to be distributed among school district and other purposes in proportion to their respective property tax millage, and thus the respective shares of the fees‑in‑lieu cannot be determined until after the millage is determined. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 219

Section 59‑21‑1030 requires a school district to maintain at least the level of financial effort per pupil as in the prior year adjusted for an inflation factor. The taxing municipality is required to set millage so that the minimum effort per pupil is generated, but does not have the authority to “cut back” the required local effort so as to equal only the minimum amount necessary, as this would have the effect of reading out the “at least” in the first sentence of the section. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747.

The only logical reading of the first two sentences of Section 59‑21‑1030 is that a school board shall set the rate at least as high as the minimum local effort, and the taxing municipality may adjust this rate only if it determines the rate is below the minimum required. Therefore, it may not unilaterally reduce the amount set by the school board to the minimum, as the clear meaning and purpose of the statute is to provide a minimum, not a maximum, financial effort by school districts. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747.

Accordingly, Section 59‑21‑1030 requires a taxing municipality to appropriate the projected EIA minimum local effort as submitted by a school district and reported by Department of Education. Richland County School Dist. One v. Richland County Council (S.C. 1992) 310 S.C. 106, 425 S.E.2d 747. Education 216

2. Under former law

Disputed tax, which taxpayers contended was unconstitutional, must be paid under protest and action brought for its recovery because that remedy, provided to taxpayers by S. C. Code Sections 12‑47‑10 et seq., is exclusive. McDonald v. Womack (S.C. 1987) 293 S.C. 61, 358 S.E.2d 705.

**SECTION 59‑21‑1040.** Compensation and employer contributions; funding.

The compensation and employer contributions of any new personnel employed for the purpose of implementing specific provisions of the South Carolina Education Improvement Act of 1984 must be paid from funds appropriated for that purpose by the General Assembly from funds derived from increased revenue provided for in the Education Improvement Act of 1984 Fund. This may not be construed to preclude any school district from providing additional compensation and employee contributions for the purpose of implementing specific provisions of the South Carolina Education Improvement Act of 1984. School district employees are not entitled to receive any across‑the‑board pay increases or employer contributions provided for other state employees in the annual general appropriation act unless otherwise authorized by the General Assembly in that act.

HISTORY: 1990 Act No. 612, Section 74C.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

Under former law

The Education Improvement Act mandate for the pupil‑teacher ratio reductions required by school districts are required to be financed by state appropriations pursuant to Section 12‑35‑1559. Because of the failure of the General Assembly to appropriate funds for the ratio reduction for the 1986‑87 school year, school districts are not legally required to finance through increased local taxes or otherwise, the designated ratio. 1986 Op Atty Gen, No. 86‑71, p. 228.

ARTICLE 10

Campus Incentive Program

**SECTION 59‑21‑1210.** Campus incentive program established; funding.

The State Board of Education, in consultation with the Education Oversight Committee, shall develop and implement a campus incentive program to reward faculty members who demonstrate superior performance and productivity. Funds for the campus incentive program must be provided by the General Assembly in the annual general appropriations act.

HISTORY: 1991 Act No. 171, Part II, Section 59A; 1998 Act No. 400, Section 15.

LIBRARY REFERENCES

Schools 144(1).

Westlaw Key Number Search: 345k144(1).

C.J.S. Schools and School Districts Sections 315 to 316, 321 to 322, 329 to 331, 338.

**SECTION 59‑21‑1220.** Guidelines for development of program; campus incentive advisory committee; distribution of funds; regulations.

The campus incentive program must be developed based on the following guidelines:

(1) exceptional improvement in or the maintenance of superior student performance, with consideration given to rewarding schools which demonstrate exceptional improvement or maintenance of superior performance by all the groups of students at various levels of performance;

(2) the school must have met or surpassed the goals and strategies outlined in its school improvement report;

(3) no faculty member may receive funds under the incentive program unless all the established eligibility criteria are met;

(4) faculty, for the purposes of this program, includes principals, assistant principals, vocational education directors, special education teachers, kindergarten teachers, classroom teachers, librarian/media specialists, guidance counselors, psychologists, school nurses, aides, and others as determined by the advisory committee;

(5) consideration must be given to using part of each campus incentive reward for faculty use for school improvement for such activities as research, planning meetings, curriculum development, where faculty are paid for their time and effort, and for allowing faculty to consider such uses of the faculty incentive reward;

(6) no later than August 1, 1991, a campus incentive advisory committee must be appointed to advise on the development and implementation of the program. The advisory committee must be appointed, after receiving nominations, as set forth in this item, and consists of six at‑large members, three appointed by the Governor and three appointed by the State Superintendent of Education, and the following members appointed by the State Board of Education:

one school board member;

two elementary teachers;

two middle or junior high school teachers;

two secondary school teachers;

one elementary school principal;

one middle or junior high school principal;

one secondary school principal;

one district superintendent;

one guidance counselor;

one assistant principal; and

one teacher’s aide.

The State Board of Education shall request:

(a) each statewide professional teacher organization to nominate at least two qualified continuing contract teachers for each teacher position on the committee;

(b) a statewide organization representing administrators (principals and superintendents) to nominate at least two qualified candidates for the administrator positions on the committee;

(c) a statewide organization to nominate at least two qualified candidates for the guidance counselor position on the committee;

(d) a statewide organization representing school boards to nominate at least two qualified candidates for the school board position on the committee.

Each nominating organization shall seek qualified candidates from the entire pool of persons eligible to serve and shall make nominations to the state board based on merit and without regard to membership in the nominating organization.

It is the intent of the General Assembly that funds for the campus incentive program must be distributed to districts on a per pupil basis but with a minimum amount per faculty member in schools qualifying for the program reward; however, the advisory committee may recommend an alternative distribution method. The per pupil allocation must be based on the one hundred thirty‑five day count of average daily membership for the preceding fiscal year.

The State Board of Education, in consultation with the Education Oversight Committee, shall develop regulations to ensure that the campus incentive funds are used in an appropriate manner and to establish a procedure for redistributing funds from districts that do not require all of their allocations. The General Assembly shall determine each year in the general appropriations act the amount of campus incentive funds which must be included in the calculation of the South Carolina average teacher salary.

To enable school faculties to undertake needed work in the area of school improvement and planning, and such activities as research, curriculum development, coordination of courses, and special projects, or other activities the faculty may wish to undertake for improving student performance, development, and learning and coordination of services with other social and health agencies, the General Assembly shall set aside in the annual general appropriations act other campus incentive funds which must be used by the school districts and any interested schools to compensate faculty for their time and effort. The State Board of Education shall promulgate guidelines that ensure that the districts of the State utilize these funds in an appropriate manner and to establish a procedure for redistributing funds from districts that do not require all of their allocation.

HISTORY: 1991 Act No. 171, Part II, Section 59A; 1998 Act No. 400, Section 15.

LIBRARY REFERENCES

Schools 144(1).

Westlaw Key Number Search: 345k144(1).

C.J.S. Schools and School Districts Sections 315 to 316, 321 to 322, 329 to 331, 338.